

TRIBAL CHILD WELFARE ISSUES

Priority Number 1: Identifying Children as Indian Children

Issue Statement

Too often, children are not being identified as Indian children, either at all or at some point later in the child welfare process than should occur. In some cases, if a child does not have an Indian name or does not “look Indian,” it is assumed that the child is not Indian. Child welfare practice should be altered so that all children are assumed to be Indian until it is determined that they are not.

Outcome Objective

Active efforts shall be made, at the point of entry into the child welfare system and at appropriate subsequent points:

- to determine if a child or a member of the child’s family is Indian,
- to determine what the tribal affiliation is, and
- to notify the appropriate tribe or tribes of the child’s involvement in the child welfare system.

This is required by the Indian Child Welfare Act and must be done so that tribes can make informed decisions regarding their desire to be involved, and at what level, with the case.

Action Steps

Action	By Whom	Notes
Statewide tool or screen to assist in assuring appropriate questions are asked (check with Montana, NICWA, and Oregon).	DHFS in collaboration with tribes, counties, and Court Improvement Program. Utilized by DHFS, counties, and child placing agencies.	Templates were added to eWiSACWIS effective 12/20/04 to require screening of children at the access/intake stage.
Directory of federally-recognized tribes in Wisconsin and tribal contacts for use by agencies with instructions and technical assistance. Also list BIA regional office for tribes outside of Wisconsin.	Developed by DHFS in collaboration with tribes. Utilized by same agencies as above.	This information has been added to eWiSACWIS.
Specificity of ICWA requirements and sanctions for violations of requirements; draft legislation provided to tribes for comment and suggested revision.	Developed by DHFS in collaboration with tribes and counties.	
Develop a statewide form/template to be used to submit to tribes to determine if the child is covered under ICWA.	Developed by DHFS in collaboration with tribes and counties.	As noted above, this was added to eWiSACWIS effective 12/20/04
Provide tribes with access to eWiSACWIS.	DHFS in collaboration with tribes.	A demo of eWiSACWIS was made to tribal child welfare staff in February 2005.

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Priority Number 2: Training on ICWA, Tribal Codes/Ordinances, and Cultural Issues

Issue Statement

Staff and administrators of a variety of child welfare agencies and organizations do not have adequate knowledge of the intent and content of the ICWA that supports the implementation of the law in either legal or practice situations. Staff of the Department, the DOC Division of Juvenile Services, counties, private agencies, tribes, and legal staff (e.g., judges, Guardians ad Litem, District Attorneys/Corporation Counsel) require ongoing training related to the content, history, and purpose of the Indian Child Welfare Act and implications for implementation in Wisconsin. All training should include an Indian co-trainer.

Outcome Objective

All training participants listed above will demonstrate an understanding of the philosophical and legal concerns around removal of Indian children from their homes, placing Indian children in out-of-home care, terminating parental rights, and placing Indian children for adoption, all recognizing that there are differences among tribes.

Action Steps

Action	By Whom	Notes
Require training on the above curricula and require an 80% score in order to be certified as completing ICWA training. [Ref. s. 48.981(8)(d), Stats.] Include juvenile justice staff in this requirement. [Ref. Ch. DOC 399, Adm. Code]	DHFS and DOC requirement Applicable to DHFS, DOC, county, and child placing agency staff Developed with DOC, tribes and counties	
Develop training curricula related to the above.	training partnerships, DHFS, counties, tribes	
Incorporate ICWA into appropriate state statutes and administrative rules.	DHFS in conjunction with counties and tribes	This will be undertaken in the 2005-06 session of the Legislature.
The University of Wisconsin schools of social work and related programs should include a component on ICWA required for completion of the degree for those with an emphasis on child welfare and for those in the IV-E graduate program.	DHFS, DOC, UW, Voc/Tech System, counties, tribes, training partnerships	
Require that staff and management of counties obtain available training from tribes with which they predominantly work on the laws, customs, and culture of that tribe/those tribes.	Tribes, counties, and training partnerships	
Incorporate into state licensing rules that licensed agencies must coordinate/may not impede* the cultural, religious, and spiritual beliefs of tribes. *For further discussion	DHFS, counties, and tribes May also include law enforcement, et. al. re: infant relinquishment	

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Priority Number 3: Adoptions

Issue Statement

Tribes are not always involved in cases involving Indian children and the decisions that affect the outcome of the case, including removal from the home, placement in out-of-home care, termination of parental rights, and adoption. As a result, Indian children may experience outcomes that are not in the best interest of either the child or the tribe or both.

Outcome Objective

State DHFS and County Staff and Managers, Private Agency staff, and Legal Counsel must involve tribes in all planning, implementation, and evaluation related to removal from the home, placement in out-of-home care, termination of parental rights, and adoptions to enable Indian children to experience positive measurable outcomes in adoptive services.

This includes the legislative intent of the ICWA relative to paternity and determination of the best interests of the child as defined in the Indian Child Welfare Act of 1978, and assessing the appropriateness of adoptive placements.

Action Steps

Action	By Whom	Notes
Provide technical assistance on and strengthen laws and policies regarding efforts to determine paternity, including DNA testing.	DHFS in conjunction with counties and tribes	
Require documented proof of the Indian heritage of potential adoptive families.	DHFS in conjunction with tribes and counties	
DHFS will contract with tribes to administer all adoptions involving Indian children.	DHFS in conjunction with tribes	
Adoption home studies and agreements should specifically state how the child's Indian heritage will be preserved.	DHFS, tribes and counties	
Provide tribes with listing of DHFS contract agencies doing special needs adoptions.	DHFS	

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Priority Number 4: 161 Agreements

Issue Statement

161 agreements were created pursuant to 1983 Wisconsin Act 161 and were designed to identify the responsibilities of each agency in terms of the funding of placements of children ordered by tribal courts. Problems encountered by Tribes in using 161 Agreements have included:

1. Counties refusing to enter into a 161 Agreement
2. Counties entering into a 161 Agreement and not fully complying with the terms

Over the years, additional issues have been added to 161 Agreements, including identification of which agency will determine IV-E eligibility, which agency will develop and implement case plans, which agency will develop and review permanency plans, etc. In addition, it has been recommended that these agreements also include other child welfare related determinations (e.g., how CPS investigations will be handled) and the inclusion of juvenile justice cases. In recent times, other issues have arisen, such as the implications of either party not signing the agreement and the lack of sanctions for not abiding by the agreement. In addition, there has been much discussion regarding whether the agreements should be between tribes and the state rather than tribes and counties.

Outcome Objective

Counties, in collaboration with DHFS, will consult with tribes to assess the effectiveness of the collaborative planning, implementation, and evaluation of 161 Agreements and implement any corrective action that may include continuance, modification, or elimination.

Action Steps

Action	By Whom	Notes
Define the content of 161 Agreements.	DHFS, tribes and counties	The tribal child welfare group has already begun discussing this.
Consider establishing a direct state-tribal relationship for placement funding.	DHFS, tribes and counties	
Establish a grievance process and sanctions for non-compliance with 161 Agreements.	DHFS, tribes and counties	
Identify implications of either a county or a tribe not signing a 161 Agreement.	DHFS, tribes, counties, DOJ	
Include measurable outcomes in 161 Agreements that include timelines and commitment of funds for services.	DHFS, tribes and counties	
Include "full faith and credit" language for tribal-licensed foster homes in 161 Agreements and Ch. HFS 56, Adm. Code.	DHFS, tribes and counties	
Consider replacing 161 Agreements with Tribal/County or Tribal/State child welfare agreements that are more comprehensive.	DHFS, tribes and counties	

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Priority Number 5: Foster Home Placements and Resources

Issue Statement

Currently, there is some disagreement regarding the authority of tribes under the Indian Child Welfare Act to license foster homes outside of the boundaries of reservations or public trust lands. Our statutes and administrative rules are silent on this issue. There should be official determination of whether this authority exists or does not exist and that determination should be formalized in either statute or administrative rule.

There have also been some concerns related to **“full faith and credit”** not being given by counties and adoption agencies to foster homes licensed by tribal agencies. To a certain extent, this is due to the fact that tribes may, but are not required to, use the Wisconsin foster home licensing administrative rule.

As well, there is disagreement among counties, and between some counties and DHFS, as to whether relatives may be licensed as foster parents at the discretion of that relative. There is no question that relatives do not need to be licensed to care for a child, but they must be licensed if they wish to receive a foster care payment rather than a Kinship Care payment.

Outcome Objective

DHFS will consult with tribes to establish a State Statute or Administrative Rule recognizing **“full faith and credit”** of the tribal licensing process and foster placement costs “on or off/near” the reservation.

Action Steps

Action	By Whom	Notes
Clarify state statutes regarding whether relatives may apply for and be granted a foster home license when a child has been placed with them by court order.	DHFS and counties	
Clarify the authority of tribes to license foster homes on or near reservations or public trust lands and determine whether this authority extends to homes off of the reservation or public trust lands.	DHFS	Need to develop a mutually agreeable definition of “near” and develop guidelines regarding this. Need to determine how this relates to licensure as a child placing agency.
Include “full faith and credit” language for tribal-licensed foster homes in 161 Agreements and Chs. HFS 56 and 38, Adm. Code.	DHFS, tribes, and counties	This will be issued as a numbered memo while the rules are being revised.
Training for county and private agency staff on laws, rules, etc. related to licensure and “full faith and credit.”	DHFS and tribes	

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Priority Number 6: Safety of Children in Their Own Homes and in Out-of-Home Care

Issue Statement

DHFS has, in recent years, developed policies and provided technical assistance and consultation to county agencies on the concepts involved with the safety of children, including in-home family-managed safety plans, in-home agency-managed safety plans, and out-of-home care. Similar efforts should be undertaken to assure that tribal child welfare agencies are aware of these safety concepts and practices.

Agencies providing services to Indian children must be aware of the higher standard of “active” efforts to prevent unwarranted removal of Indian children from their homes and the court-ordered plan for reunification of children with their families, including the appropriateness of reunification conditions. This concept must be considered when establishing, implementing, and evaluating both family-managed and agency-managed in-home safety plans and both prior to and after any placement of the child in court-ordered Kinship Care or other type of out-of-home care.

Outcome Objective

By July 1, 2005, Tribes and Counties will enter into collaborative planning, implementation, and evaluation of measurable services related to the safety plans for Indian children in their own homes, in court-ordered Kinship Care, and in out-of-home care.

Action Steps

Action	By Whom	Notes
DHFS, counties, and tribes should confer on the development, implementation, and evaluation of all types of safety plans, including plans for reunification.	DHFS, counties, tribes, private consultants	
County agencies must provide the earliest possible notification to tribes when a referral on an Indian child is received, when a case is opened, and at other required steps in the case process.	counties	
Tribal child welfare staff should attend safety training (including content and use of tools to determine safety) designed specifically for ICW staff.	DHFS, tribes, training partnerships	

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Priority Number 7: Title IV-E Funding for Tribes

Issue Statement

Tribes can not receive Title IV-E funds directly from the federal government. The federal government is developing a proposal under which a state can opt to receive Title IV-E funds as a block grant rather than an entitlement. Under that proposal, it is clear that the federal government would provide IV-E funds directly to tribes. In addition, other federal legislation has been introduced that would allow tribes to receive Title IV-E funds directly.

In addition, at least some Wisconsin tribes would prefer to have a Title IV-E funding relationship with the state rather than the county(ies) in which they are located.

Tribes in Wisconsin support the legislation proposed by Senator Baucus that allows tribes to contract directly with the federal government.

Outcome Objective

DHFS will explore the possibility of entering into a collaborative agreement that allows tribes to contract directly with the State of Wisconsin for Federal Fiscal Year 2006 Title IV-E funds that may include:

1. Maintenance Costs
2. Training Costs for Child Welfare Staff and Foster Parents
3. Administrative Costs

Action Steps

Action	By Whom	Notes
Research the implication for Tribes of federal regulations on the provision of Title IV-E funds directly to tribes by the federal government.	DHFS and tribes	
Consider establishing a direct state-tribal relationship for Title IV-E funding.	DHFS, tribes and counties	